

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

03 12240 REK

Barrow Industries Inc.,
Plaintiff

v.

Civil Action No. _____

J. C. Penney Company, Inc.
and
Victoria Classics Ltd.,
Defendants

MAGISTRATE JUDGE

Cohen

COMPLAINT

Plaintiff, as its complaint, alleges the following:

1. Plaintiff, Barrow Industries Inc., is a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts, and has its principal place of business at 3 Edgewater Drive, Norwood, Massachusetts 02062.

2. On information and belief, defendant, J. C. Penney Company, Inc., is a corporation organized and existing under the laws of the State of Delaware, and has its principal place of business at 6501 Legacy Drive, Plano, Texas 75024-3698 (and a mailing address of P.O. Box 10001, Dallas, Texas 75301-1115).

AMOUNT \$150 5/1684
SUMMONS ISSUED YES
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY CLK EOM
11/13/03

3. On information and belief, defendant, Victoria Classics Ltd., is a corporation organized and existing under the laws of the State of New York, and has its principal place of business at 277 Fifth Avenue, New York, New York 10016.

4. This court has jurisdiction of the subject matter of this claim under the provisions of Title 28, United States Code §1338(a), because this action arises under an Act of Congress relating to Copyrights, the Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2598, Title 17, United States Code §§101 et seq.

5. This Court has jurisdiction over both defendants because defendants have transacted business in Massachusetts; defendants have contracted to supply fabric materials in Massachusetts; defendants have caused tortious injury to plaintiff by advertising, selling and delivering fabric materials in Massachusetts; defendants have caused tortious injury in Massachusetts to plaintiff by advertising, selling and delivering fabric materials outside of Massachusetts while defendants regularly do or solicit business in Massachusetts and/or engage in other persistent courses of conduct in Massachusetts, and/or derive substantial revenue from fabric materials sold in Massachusetts; and this action arises from these activities.

6. Plaintiff is a marketer of fabric materials. In 2001, an employee of plaintiff's created an original fabric design, entitled "M 5789" (hereafter called Plaintiff's Design).

7. Plaintiff's Design contains considerable material wholly original with plaintiff and is copyrightable subject matter under the Copyright Act of 1976.

8. Plaintiff first published (i.e. marketed) fabric incorporating Plaintiff's Design on January 1, 2002. A photocopy of a sample of Plaintiff's Design is attached hereto as Exhibit A.

9. Plaintiff's Design was made the subject of an application which matured into United States Copyright Registration Certificate No. VA 1-148-737, issued by the Register of Copyrights on April 30, 2002, a copy of which is attached hereto as Exhibit B.

10. Since January 1, 2002, plaintiff has been and still is the sole proprietor of all right, title and interest in and to the copyright of Plaintiff's Design. Since January 1, 2002, plaintiff has been and still is the sole owner of all right, title and interest in and to the copyright registration of Plaintiff's Design.

11. Plaintiff has complied with all statutory requirements in securing federal statutory copyright for Plaintiff's Design under the Copyright Act of 1976.

12. After January, 1, 2002, defendants, with full actual knowledge of, and with full access to, the copyrighted Plaintiff's Design, willfully infringed plaintiff's copyright in Plaintiff's Design by copying Plaintiff's Design and by marketing defendants' fabric materials incorporating Plaintiff's Design (hereinafter called Defendants' Copied Fabric Materials). Defendants' copying was without the consent of plaintiff. Defendants' Copied Fabric Materials bear a fabric design which is virtually identical to plaintiff's fabric materials incorporating Plaintiff's Design. Copies of various materials showing Defendants' Copied Fabric Materials are attached hereto as Exhibit C.

13. Plaintiff has notified defendants that defendants have infringed plaintiff's copyright, but defendants have refused to cease infringing and have continued to willfully infringe plaintiff's copyright.

14. Defendants' wrongful activities constitute a violation of the United States Copyright Act.

WHEREFORE, PLAINTIFF PRAYS:

1. That defendants be held to have violated Title 17, United States Code §101 et seq. by reason of defendants' willful copyright infringement.

2. That defendants be enjoined during the pendency of this action and permanently from infringing said copyright of said plaintiff in any manner, and from purchasing, importing, making, having made, selling, marketing, shipping or advertising Defendants' Copied Fabric Materials or any materials bearing Plaintiff's Design.

3. That defendants, at the election of plaintiff, said election to be made at any time before entry of final judgment, as authorized by Title 17, United States Code §504, be required to pay damages to plaintiff of either:

- a. such actual damage as plaintiff has sustained as a consequence of defendants' infringement of plaintiff's copyright, together with any profits of defendants that are attributable to said infringement and are not taken into account in computing said actual damages; or

b. statutory damages in the sum of \$100,000 for defendants' willful infringement of plaintiff's copyright.

4. That defendants be required to deliver up for destruction all of Defendants' Copied Fabric Materials and all other materials which infringe upon plaintiff's copyright, as well as all articles by means of which such infringements were or could be made.

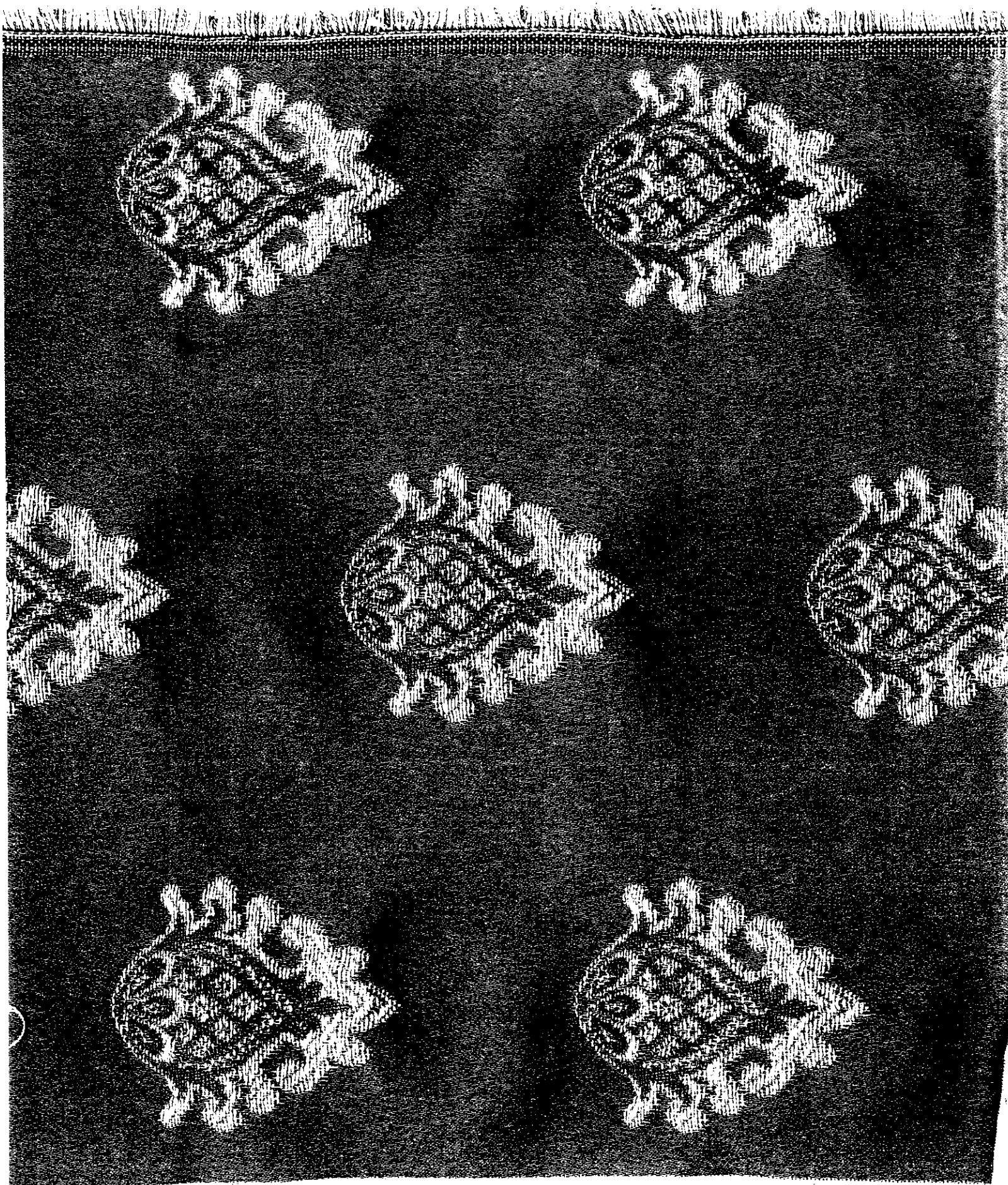
5. That defendants be required to pay to plaintiff the full costs of this action, including a reasonable attorney's fee, as authorized by Title 17, United States Code §505.

6. That plaintiff be awarded such other and further relief as the Court deems just or equitable in the circumstances.

A handwritten signature in black ink, reading "I. Stephen Samuels". The signature is fluid and cursive, with a horizontal line drawn underneath it.

I. Stephen Samuels
B.B.O. No. 440200
Samuels, Gauthier & Stevens LLP
225 Franklin Street, Suite 3300
Boston, MA 02110
Tel: 617-426-9180 (Ext. 107)
Fax: 617-426-2275
Email: ISS@SamuelsTM.com
Attorney for Plaintiff

0587.03G



A



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters
REGISTER OF COPYRIGHTS
United States of America

VA 1-148-737



EFFECTIVE DATE OF REGISTRATION

APR 30 2002

Month Day Year

OFFICIAL SEAL

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

TITLE OF THIS WORK ▼

M 5789

NATURE OF THIS WORK ▼ See instructions

Design specimen on CD-Rom
Artwork

PREVIOUS OR ALTERNATIVE TITLES ▼

Publication as a Contribution If this work was published as a contribution to a periodical, serial, or collection, give information about the collective work in which the contribution appeared **Title of Collective Work ▼**

If published in a periodical or serial give: **Volume ▼** **Number ▼** **Issue Date ▼** **On Pages ▼**

NAME OF AUTHOR ▼

Barrow Industries Inc. dba
Merrimac Textile Co.

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☒ Yes ☐ No

Author's Nationality or Domicile
Name of Country

OR { Citizen of ☐ _____
Domiciled in ☒ U.S.A.

Was This Author's Contribution to the Work

Anonymous? Yes ☐ No ☒
Pseudonymous? Yes ☐ No ☒

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Check appropriate box(es). **See instructions**

☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☒ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

NAME OF AUTHOR ▼

DATES OF BIRTH AND DEATH

Year Born ▼ Year Died ▼

Was this contribution to the work a "work made for hire"? ☐ Yes ☐ No

Author's Nationality or Domicile
Name of Country

OR { Citizen of ☐ _____
Domiciled in ☐ _____

Was This Author's Contribution to the Work

Anonymous? ☐ Yes ☐ No
Pseudonymous? ☐ Yes ☐ No

If the answer to either of these questions is "Yes," see detailed instructions

NATURE OF AUTHORSHIP Check appropriate box(es). **See instructions**

☐ 3-Dimensional sculpture ☐ Map ☐ Technical drawing
☐ 2-Dimensional artwork ☐ Photograph ☐ Text
☐ Reproduction of work of art ☐ Jewelry design ☐ Architectural work

Year in Which Creation of This Work Was Completed

2001 ☐ Year This information must be given in all cases.

Date and Nation of First Publication of This Particular Work

Complete this information ONLY if this work has been published. Month ☒ January Day ☒ 1 Year ☒ 2002 U.S.A. ☐ Nation

COPYRIGHT CLAIMANT(S) Name and address must be given even if the claimant is the same as the author given in space 2 ▼

Barrow Industries Inc. dba
Merrimac Textile Co.
3 Edgewater Drive, Brookside Pk.
Norwood, Massachusetts 02062

Transfer If the claimant(s) named here in space 4 is (are) different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. ▼

APPLICATION RECEIVED

APR 30 2002

ONE DEPOSIT RECEIVED

APR 30 2002

TWO DEPOSITS RECEIVED

FUNDS RECEIVED

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MORE ON BACK ▶ • Complete all applicable spaces (numbers 5-9) on the reverse side of this page
• See detailed instructions • Sign the form at line 8

DO NOT WRITE HERE

Page 1 of 1 pages

B

NOTE

Under the law the "author" of a "work made for hire" is generally the employer, not the employee (see instructions). For any part of this work that was "made for hire" check "Yes" in the space provided; give the employer (or other person for whom the work was prepared) as "Author" of that part and leave the space for dates of birth and death blank.

See instructions before completing this space

CHECKED BY *J.R.*☐ CORRESPONDENCE
YesFOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET.

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?Yes ☒ No ☐ If your answer is "Yes," why is another registration being sought? (Check appropriate box.) ▼a. ☐ This is the first published edition of a work previously registered in unpublished form.b. ☐ This is the first application submitted by this author as copyright claimant.c. ☐ This is a changed version of the work, as shown by space 6 on this application.

If your answer is "Yes," give: Previous Registration Number ▼

Year of Registration ▼

DERIVATIVE WORK OR COMPILATION Complete both space 6a and 6b for a derivative work; complete only 6b for a compilation.a. **Preexisting Material** Identify any preexisting work or works that this work is based on or incorporates. ▼See instructions
before completing
this space.b. **Material Added to This Work** Give a brief, general statement of the material that has been added to this work and in which copyright is claimed. ▼**DEPOSIT ACCOUNT** If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

Name ▼

Account Number ▼

Samuels, Gauthier & Stevens LLP

DA063789

CORRESPONDENCE Give name and address to which correspondence about this application should be sent. Name Address Apt City State ZIP ▼Naomi W. Norcott
Samuels, Gauthier & Stevens LLP
225 Franklin Street, Suite 3300
Boston, MA 02110

Area code and daytime telephone number ▶ () (517) 426-9180

Fax number ▶ ()

Email ▶

CERTIFICATION* I, the undersigned, hereby certify that I am the

check only one ▶

author

other copyright claimant

owner of exclusive right(s)

☒ authorized agent ofBarrow Industries Inc.
dba Merrimac Textile Co.

Name of author or other copyright claimant, or owner of exclusive right(s) ▲

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge.

Typed or printed name and date ▼ If this application gives a date of publication in space 3, do not sign and submit it before that date.

Naomi W. Norcott

Date ▶ April 26, 2002

Handwritten signature (X) ▼

Certificate
will be
mailed in
window
envelope
to this
address:Name ▼ Naomi W. Norcott
Samuels, Gauthier & Stevens LLP
Number/Street/Apt ▼ 225 Franklin Street, Suite 3300
City/State/ZIP ▼ Boston, Massachusetts 02110

YOU MUST

- Complete all necessary spaces
- Sign your application in space 8

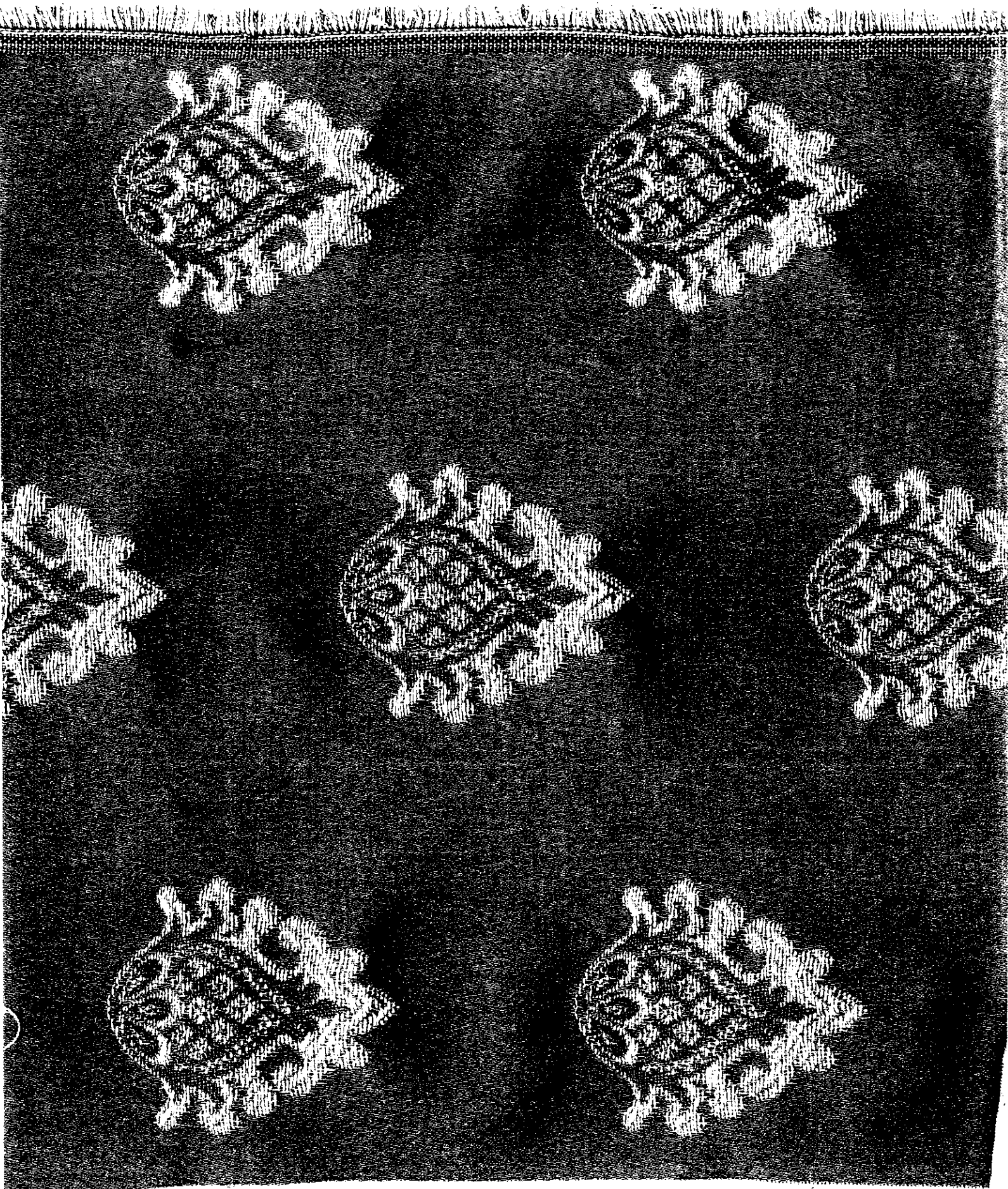
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IN THE SAME PACKAGE

1. Application form
2. Nonrefundable filing fee in check or money order payable to Register of Copyrights
3. Deposit material

As of July 1, 1999
the filing fee for
Form VA is \$30

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Copyright Office
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000



JCPENNEY

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722/9038/010301	CHAT VALANCE	
	QTY 1	40.00
SALE DISC	8.01	-
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TOTAL CERTIFICATE	3.20	-
SUBTOTAL		28.79
SALES TAX 8.250% 75240		2.37
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VISA		31.16
TTL 08/27/03		31.16

YOUR TOTAL SAVINGS TODAY 11.21 -

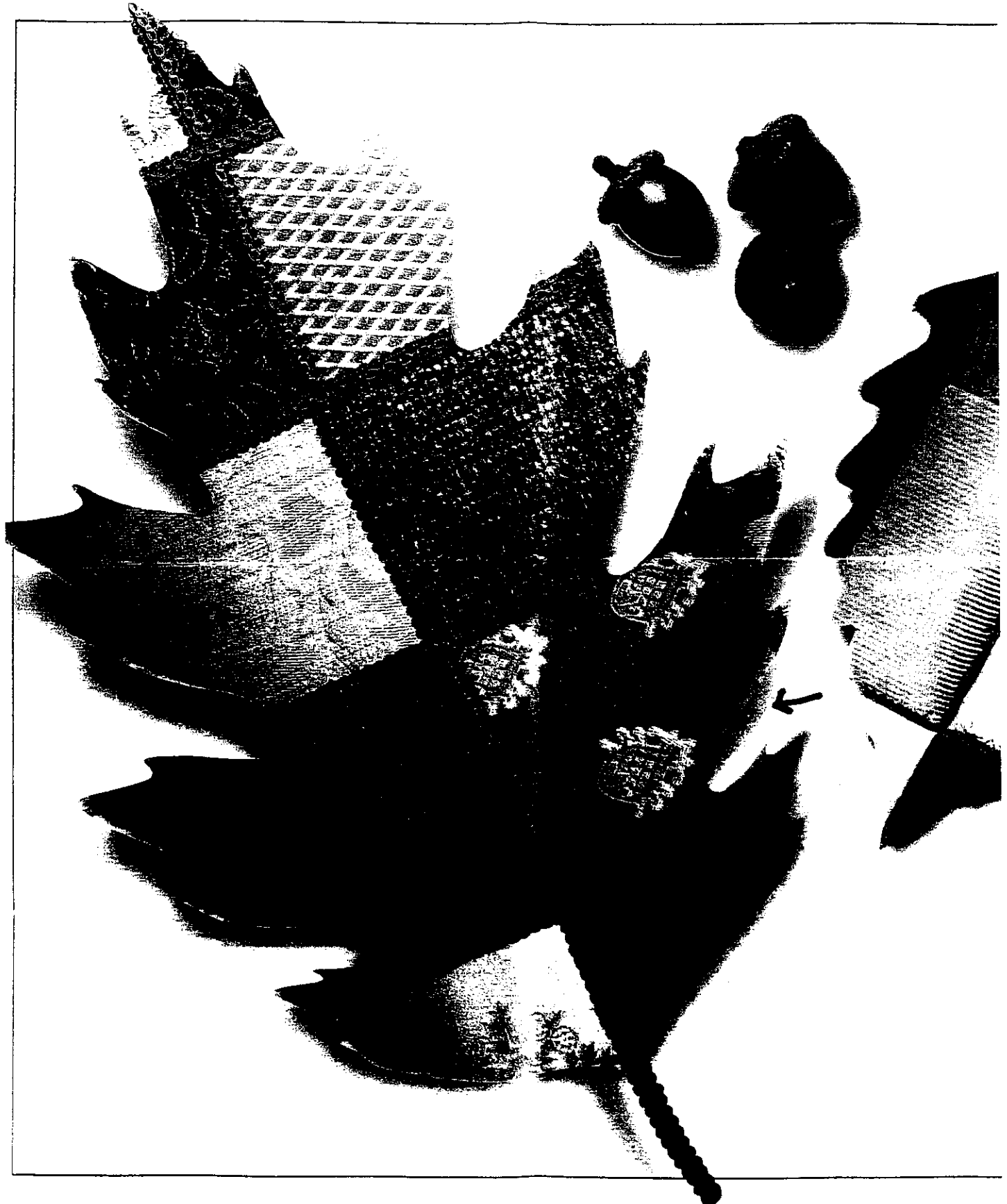
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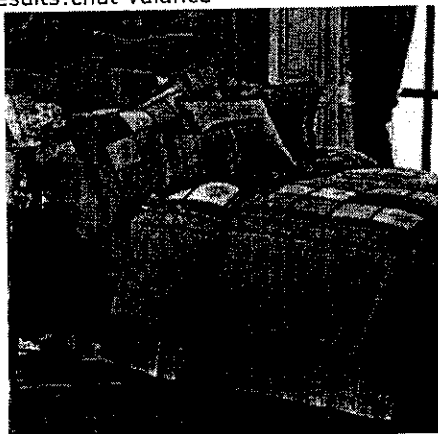
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